IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.509 of 2006

Decided on: March 23, 2007

Swaru & Others **.....Appellants.**

VERSUS

Punu **.....Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellants : Mr. G.R. Palsara, Advocate.

For the respondent : Nemo.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Respondent-plaintiff instituted a suit in respect of entire area of certain Khasra number seeking issuance of permanent prohibitory injunction restraining the appellants-defendants from causing interference in that Khasra number. Appellants-defendants took the plea that they were in possession of a portion of that Khasra, to the extent of 1 bigha, 8 biswas, 8 biswansis area, and their possession had become adverse. Trial Court returned the finding that the appellants-defendants were not in possession of any portion of the suit property and that the respondent-plaintiff and his brothers were joint owners in possession. Consequently, the suit was decreed. Appeal filed by the appellants-defendants in the Court of District Judge against the decree of the trial Court stands dismissed.

Whether the reporters of the local papers may be allowed to see the judgment?

3. Learned counsel representing the appellants-defendants submits that earlier also the respondent-plaintiff had filed a suit with respect to this very Khasra and that that suit was decreed by the trial Court and appeal against that decree filed by the appellants-defendants was dismissed by the District Judge, but when the matter came in second appeal to this Court the plaintiff-respondent withdrew that suit with liberty to file a fresh one on the same cause of action. His contention is that this fact was not only not disclosed by the respondent-plaintiff in the subsequent suit, out of which this appeal has arisen, but even during the course of his cross-examination he denied that he had filed any suit in the past and the same had been withdrawn with liberty to file a fresh one.

4. I do not think that the non-stating of the aforesaid fact in the plaint or the denial of the suggestion in the course of cross-examination by the plaintiff that no suit was filed earlier should make any difference. The reason is that no defect in the plaint is there and liberty had been granted to the respondent-plaintiff by this Court to file a fresh suit on the same cause of action, because in the earlier suit there was a formal defect. The defect was that the evidence indicated that there stood a shed on a portion of the suit land to the extent of 1 biswa area, which was in occupation of the defendant and *tatima* in respect of site of that shed had not been filed. In the present suit, it was alleged that the shed had been demolished by the respondent-plaintiff and, hence, the site, which was earlier under the shed, was also a part of the vacant land. The two Courts below have accepted this plea of the respondent-plaintiff.

5. Another submission made by the learned counsel is that the appellants-defendants are in possession of 1 bigha, 8 biswas, 8 biswansis area and in respect of this area there could not have been any decree for permanent prohibitory injunction.

6. I have gone through the judgments of the two Courts below. There is clear-cut finding that the possession of the entire land is with the respondent-plaintiff and no portion of it is in occupation of the appellants-defendants. This is a finding of fact, pure and simple.

7. In view of the abovestated position, I do not think any substantial question of law arises. Hence, the appeal is dismissed.

CMP No.913/2006

Infructuous.

March 23, 2007(sd) **(Surjit Singh), J.**